

1 MCGREGOR W. SCOTT
United States Attorney
2 CAMERON L. DESMOND
DAVID W. SPENCER
3 Assistant United States Attorney
501 I Street, Suite 10-100
4 Sacramento, CA 95814
Telephone: (916) 554-2700
5 Facsimile: (916) 554-2900

6 Attorneys for Plaintiff
7 United States of America

8
9 IN THE UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12
13 Plaintiff,
14
15 v.
16 FRANK JONATHAN GUZMAN, and
JOSE CRUZ IVAN AISPURO,
17 Defendants.

CASE NO. 2:19-CR-232-JAM

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
FINDINGS AND ORDER

DATE: November 3, 2020

TIME: 9:30 a.m.

COURT: Hon. John A. Mendez

18 On October 15, 2020, the Court continued the status conference scheduled for October 20, 2020,
19 to November 3, 2020. *See* ECF No. 35. By this stipulation, the parties request to continue the status
20 conference to January 12, 2021, and to exclude time between October 20, 2020 and January 12, 2021
21 under Local Code T4.

22 On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the
23 Eastern District of California “until further notice.” Further, pursuant to General Order 611, this Court’s
24 declaration of judicial emergency under 18 U.S.C. § 3174, and the Ninth Circuit Judicial Council’s
25 Order of April 16, 2020 continuing this Court’s judicial emergency, this Court has allowed district
26 judges to continue all criminal matters to a date after May 2, 2021.¹ This and previous General Orders,

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28 ¹ A judge “may order case-by-case exceptions” at the discretion of that judge “or upon the
request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order
will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020).

1 as well as the declarations of judicial emergency, were entered to address public health concerns related
2 to COVID-19.

3 Although the General Orders and declarations of emergency address the district-wide health
4 concern, the Supreme Court has emphasized that the Speedy Trial Act's end-of-justice provision
5 "counteract[s] substantive openendedness with procedural strictness," "demand[ing] on-the-record
6 findings" in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-
7 record findings, there can be no exclusion under" § 3161(h)(7)(A). *Id.* at 507. Moreover, any such
8 failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153
9 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit
10 findings on the record "either orally or in writing").

11 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
12 and inexcusable—General Orders 611, 612, 617, and 618 and the subsequent declaration of judicial
13 emergency require specific supplementation. Ends-of-justice continuances are excludable only if "the
14 judge granted such continuance on the basis of his findings that the ends of justice served by taking such
15 action outweigh the best interest of the public and the defendant in a speedy trial." 18 U.S.C.
16 § 3161(h)(7)(A). Moreover, no such period is excludable unless "the court sets forth, in the record of
17 the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of
18 such continuance outweigh the best interests of the public and the defendant in a speedy trial." *Id.*

19 The General Orders and declaration of judicial emergency exclude delay in the "ends of justice."
20 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address
21 continuances stemming from pandemics, natural disasters, or other emergencies, this Court has
22 discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-
23 week ends-of-justice continuance following Mt. St. Helens' eruption. *Furlow v. United States*, 644 F.2d
24 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed.
25 *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to
26 exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency).
27 The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated
28 by the statutory rules.

1 In light of the societal context created by the foregoing, this Court should consider the following
2 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
3 justice exception, § 3161(h)(7) (Local Code T4).²

4 **STIPULATION**

5 Plaintiff United States of America, by and through its counsel of record, and defendant, by and
6 through defendant's counsel of record, hereby stipulate as follows:

7 1. By previous order, this matter was set for status on October 20, 2020.

8 2. In a minute order issued October 15, 2020, the Court continued the October 20, 2020,
9 status conference to November 3, 2020, due to the Court's unavailability. ECF No. 35.

10 3. By this stipulation, the parties request to continue the status conference to January 12,
11 2021, and to exclude time between October 20, 2020, and January 12, 2021, under 18 U.S.C.
12 § 3161(h)(7)(A), B(iv) [Local Code T4].

13 4. The parties agree and stipulate, and request that the Court find the following:

14 a) The government has represented that the discovery associated with this case
15 includes approximately 928 pages of investigative reports, photographs, and other documents, as
16 well as multiple video and audio recordings. All of this discovery has been either produced
17 directly to counsel and/or made available for inspection and copying.

18 b) The Indictment in this case was returned on December 19, 2020. ECF No. 16.

19 c) Counsel for Defendant Guzman, Kelly Babineau, substituted into this case as
20 counsel of record on February 4, 2020. *See* ECF Nos. 20-22.

21 d) On August 7, 2020, the government produced approximately 36 pages of
22 additional discovery, consisting of investigative reports, to counsel for defendants.

23 e) Counsel for defendants need additional time to review the discovery, to conduct
24 necessary investigation, and to consult with their clients.

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28 ² The parties note that General Order 612 acknowledges that a district judge may make
"additional findings to support the exclusion" at the judge's discretion. General Order 612, ¶ 5 (E.D.
Cal. March 18, 2020).

1 f) Counsel for defendants believe that failure to grant the above-requested
2 continuance would deny them the reasonable time necessary for effective preparation, taking into
3 account the exercise of due diligence.

4 g) The government does not object to the continuance.

5 h) In addition, because of the public health concerns cited by the General Orders and
6 declarations of judicial emergency, and presented by the evolving COVID-19 pandemic, an
7 ends-of-justice delay is particularly apt in this case.

8 i) Based on the above-stated findings, the ends of justice served by continuing the
9 case as requested outweigh the interest of the public and the defendant in a trial within the
10 original date prescribed by the Speedy Trial Act.

11 j) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
12 et seq., within which trial must commence, the time period of October 20, 2020 to January 12,
13 2021, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code
14 T4] on the basis of the Court's finding that the ends of justice served by taking such action
15 outweigh the best interest of the public and the defendant in a speedy trial.

16 5. Nothing in this stipulation and order shall preclude a finding that other provisions of the
17 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
18 must commence.

19 IT IS SO STIPULATED.

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21 Dated: October 22, 2020

22 MCGREGOR W. SCOTT
United States Attorney

23
24 /s/ DAVID W. SPENCER
DAVID W. SPENCER
25 Assistant United States Attorney
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1 Dated: October 22, 2020

/s/ Kelly Babineau

Kelly Babineau
Counsel for Defendant
FRANK JONATHAN
GUZMAN

4 Dated: October 22, 2020

/s/ David W. Dratman

David W. Dratman
Counsel for Defendant
JOSE CRUZ IVAN AISPURO

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10 **FINDINGS AND ORDER**

11 IT IS SO FOUND AND ORDERED this 22nd day of October, 2020.

12 /s/ John A. Mendez

13 THE HONORABLE JOHN A. MENDEZ
14 UNITED STATES DISTRICT COURT JUDGE